

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF  
ALLEGHENY HEALTH, EDUCATION  
AND RESEARCH FOUNDATION,

Plaintiff,

V.

PRICEWATERHOUSECOOPERS, LLP,

Defendant.

Civil Action No. 00-684

Judge David Stewart Cercone

**APPENDIX TO THE COMMITTEE’S RESPONSE TO PwC’S STATEMENT OF  
UNDISPUTED AND MATERIAL FACTS UNDER LOCAL RULE 56.1(C)(1)**

## VOLUME 3

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July 11, 2005

**Kaye Dep.**

**In The Matter Of:**

***AHERF v.  
PRICEWATERHOUSECOOPERS, L.L.P.,***

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***DONALD KAYE, M.D.  
June 17, 2003***

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**KAYE, M.D., DONALD**



**LEGALINK<sup>®</sup>**

**A WORDWAVE COMPANY**

DONALD KAYE, M.D.,

Page 98

1 the West was paying for any expenses in  
 2 the East; it was the first time you  
 3 heard them described as a loan or as  
 4 support?  
 5 A. It was an aberrant, as a differing  
 6 type of payment than what the normal  
 7 payments would have been, which would  
 8 have been on an ongoing basis because  
 9 certainly the West was responsible for  
 10 part of the operations of the medical  
 11 school.  
 12 Q. Okay. And you indicated that the  
 13 board meeting where you heard these  
 14 payments or part of these payments  
 15 described as a loan occurred in December  
 16 of 1997?  
 17 A. Thereabouts. I recall that there  
 18 was a question from Mr. Gumberg about  
 19 what it was, what it was for, and there  
 20 was discussion of -- indicating that it  
 21 was a loan and would be repaid.  
 22 Q. Now, Dr. Kaye, is there something  
 23 about your recollection of that meeting  
 24 that causes you to place it in December  
 25 as opposed to some different month in

Page 100

1 Kaye, of the issue of transfers in the  
 2 range of a hundred million dollars from  
 3 the West to the East coming up in an  
 4 October meeting held in the West, in  
 5 Pittsburgh?  
 6 A. I have no recollection of that,  
 7 but it could have happened.  
 8 Q. Now, Dr. Kaye, I'm going to go  
 9 into the area of your review of the  
 10 financial statements for the various  
 11 components of the AHERF organization and  
 12 what they may or may not have revealed  
 13 to you. And I start with the  
 14 acknowledgment that you've testified a  
 15 couple times here already that you don't  
 16 have a financial background. But let's  
 17 start with the Eastern hospitals for  
 18 which you were acting as president or  
 19 CEO at various times during the 1990s.  
 20 Did you ever have occasion to  
 21 review monthly, quarterly, annual  
 22 financial statements with respect to  
 23 those entities?  
 24 A. Yes. I reviewed, or at least I  
 25 saw the financial statements on a

Page 99

1 1997?  
 2 A. No. It just -- I recall it was  
 3 toward the end of '97. I've been  
 4 through many of these questions many  
 5 times before, and so I basically have  
 6 come up with certain time frames for  
 7 certain things. And I said December or  
 8 thereabouts.  
 9 Q. Okay.  
 10 A. I mean, it could have been in  
 11 November, but I think it was in  
 12 December.  
 13 Q. Do you recall which organization  
 14 was having the meeting that you referred  
 15 to during which this concept of a loan  
 16 was raised by Mr. Gumberg?  
 17 A. No, I don't, but it was one of the  
 18 Eastern boards. It could have been the  
 19 medical school board; it could have been  
 20 the hospital board. If I had to guess,  
 21 and I've been told not to guess, but  
 22 since I'm prefacing it by saying it's a  
 23 guess, I would say it was a medical  
 24 school board.  
 25 Q. Do you have any recollection, Dr.

Page 101

1 monthly basis, and on an annual basis  
 2 always really with Chuck Morrison  
 3 explaining to me what was there and what  
 4 it meant. And when we started having  
 5 problems was when he couldn't explain to  
 6 me what was there and why it was there  
 7 or why numbers would change when we had  
 8 no reason in terms of the numbers of  
 9 admissions and numbers of patient days  
 10 and things like that for it to be  
 11 changing.  
 12 I depended heavily on Chuck  
 13 because he was the finance person. I  
 14 thought and I think very highly of him  
 15 in terms of competence, honesty, and so  
 16 on. And so, yeah, he would explain to  
 17 me.  
 18 I spent my time really with  
 19 the revenue and the expense statements,  
 20 and really did not pay much attention  
 21 because I never really understood them  
 22 well, or maybe I should say even at all,  
 23 the cash flow statements.  
 24 Q. You indicated in your answer that  
 25 you reviewed or at least you saw monthly

DONALD KAYE, M.D.,

Page 102

1 statements.  
 2 A. I reviewed them.  
 3 Q. Okay. And what do you recall  
 4 would constitute your review? What  
 5 would it entail on your part?  
 6 A. I'd look at the revenue, I'd look  
 7 at the expenses, I'd look at the  
 8 components of the revenue and the  
 9 components of the expenses and then see  
 10 what the bottom line was, by hospital  
 11 and by system.  
 12 Q. And after you reviewed that  
 13 information, were there occasions where  
 14 you did something about it or was this  
 15 informational, from your standpoint, in  
 16 terms of understanding what had been  
 17 reported?  
 18 A. This was primarily informational,  
 19 and as long as the bottom lines were  
 20 positive, that is, that the -- taking  
 21 the bottom line plus depreciation into  
 22 account was positive, I would be  
 23 somewhat reassured.  
 24 And when those figures were  
 25 negative, I would be concerned and try

Page 104

1 A. It occurred in July of 1997 with  
 2 me seeing it probably -- obviously after  
 3 the end of July, but mid-August, end of  
 4 August.  
 5 Q. Were these changes to negative  
 6 bottom lines attributable to the changed  
 7 environment that you testified to  
 8 earlier, or were there other reasons you  
 9 recall for that?  
 10 MR. WHITNEY: Objection.  
 11 Foundation.  
 12 THE WITNESS: I had great  
 13 difficulty in understanding precisely  
 14 why it had happened. Some of it was  
 15 clearly change in environment because we  
 16 didn't know as of the beginning of July  
 17 just exactly what the Medicare changes  
 18 were going to be, because they weren't  
 19 going to occur until, I think, October,  
 20 so that there was a -- basically a  
 21 accounting for negative changes because  
 22 that's what we thought was going to  
 23 happen. We didn't know.  
 24 And the revenue just went to  
 25 pot. And that's when we really started

Page 103

1 to find out why they were negative,  
 2 whether it was lack of revenue or  
 3 whether our expenses had suddenly jumped  
 4 somewheres over what had been budgeted,  
 5 and try to take action to correct  
 6 whichever it was.  
 7 Q. Dr. Kaye, is it fair to say that  
 8 throughout the entire 1990s there were  
 9 often occasions where at least some of  
 10 the hospitals within the East were  
 11 negative in terms of revenues not  
 12 exceeding the operating expenses and  
 13 depreciation?  
 14 A. Yes. There were times, and it was  
 15 primarily with the smaller hospitals and  
 16 the less important hospitals with the  
 17 bigger hospitals basically having bottom  
 18 lines that were able to carry or  
 19 compensate for the smaller hospitals.  
 20 Q. And did there come a time when  
 21 even the bigger hospitals turned  
 22 negative?  
 23 A. Yes, there was.  
 24 Q. And when did that occur,  
 25 approximately?

Page 105

1 to try to find out what was going on in  
 2 Pittsburgh, which was doing the billing.  
 3 When the July figures came in, the  
 4 middle or end of August, Mr. Abdelhak  
 5 had just had surgery done and I flew out  
 6 there to show him because I was very  
 7 concerned. His answer was, "Well, July  
 8 is often a difficult month to  
 9 interpret," and so on. "So don't worry  
 10 about it. Wait until you see the August  
 11 figures."  
 12 Well, when the August figures  
 13 came in, they were equally bad, and that  
 14 was about the middle of September.  
 15 BY MR. McDONOUGH:  
 16 Q. Okay. Now, you indicated in your  
 17 review of the financial statements that  
 18 you would have the statements or various  
 19 entries thereon explained to you by  
 20 Chuck Morrison.  
 21 A. As best he could.  
 22 Q. As best he could. And you  
 23 indicated that when you had problems was  
 24 when he couldn't explain them. When do  
 25 you recall the first time this began to

DONALD KAYE, M.D.,

Page 278

1 that would be good.  
 2 MR. WHITNEY: Or we may  
 3 decide, if he's -- if Joe is windy and  
 4 goes as he did today until 1:00. And  
 5 all, we may decide we need to take that  
 6 break. But I'd like to avoid that.  
 7 MR. ISTVAN: Okay.  
 8 MR. McDONOUGH: That's what I  
 9 get for letting you choose when to have  
 10 the lunch break.  
 11 THE VIDEOGRAPHER: Off the  
 12 video --  
 13 MR. ISTVAN: Well, I just was  
 14 hoping somebody other than me would be  
 15 the one who wussed out. But, I mean, if  
 16 nobody else is going to wuss out, I'll  
 17 step up to the plate. I mean, I'll  
 18 wuss.  
 19 MR. McDONOUGH: Okay. So we  
 20 start at 9:00 tomorrow?  
 21 MR. ISTVAN: Fair enough.  
 22 MR. McDONOUGH: Okay. Thank  
 23 you.  
 24 THE VIDEOGRAPHER: This is  
 25 the end of tape number four. The time

Page 280

1 WITNESS CERTIFICATION  
 2  
 3 I hereby certify that I have  
 4 read the foregoing transcript of my  
 5 deposition testimony, and that my  
 6 answers to the questions propounded,  
 7 with the attached corrections or  
 8 changes, if any, are true and correct.  
 9  
 10  
 11

DATE DONALD KAYE, M.D.

PRINTED NAME

Page 279

1 is 7:20.  
 2 MR. McDONOUGH: 5:20.  
 3 (The deposition adjourned at  
 4 5:20 p.m.)  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
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 23  
 24  
 25

**Kennedy Dep.**





VIDEOTAPED DEPOSITION OF WILLIAM C. KENNEDY  
CONDUCTED ON THURSDAY, AUGUST 15, 2002

Page 226

1 WILLIAM C. KENNEDY  
2 Mike ever calling me asking me questions about what I 15:57:55  
3 might have meant or not meant. And I -- Mike and I 15:57:58  
4 worked very well together, so I -- you know, I 15:58:03  
5 just -- if I were involved in a call with Mike, I 15:58:06  
6 would remember it, and I just -- I don't remember 15:58:13  
7 one. 15:58:16  
8 Q. Okay. Is it your opinion that any realized 15:58:24  
9 or unrealized gains that were had on the Lockhart 15:58:33  
10 fund -- and I'm referring specifically to the three 15:58:37  
11 accounts that are actually titled Lockhart and have 15:58:40  
12 all the same language in the case of a security, that 15:58:43  
13 language -- is it your belief that any gain on that 15:58:50  
14 sale or any value appreciation on those funds other 15:58:55  
15 than unspent income is part of principal? 15:59:01  
16 MR. RYAN: Objection. 15:59:08  
17 THE WITNESS: I think any monies that are 15:59:09  
18 made on the sale of the securities would be 15:59:10  
19 considered a premium or profit and that would be 15:59:14  
20 corpus. If you're getting a dividend -- you're 15:59:17  
21 holding on to the stock and you're receiving 15:59:23  
22 dividends, it would seem to me that in that instance 15:59:25  
23 you're probably talking about income. 15:59:29  
24 BY MR. TORBORG: 15:59:33  
25 Q. Okay. Now, when you -- you said that you 15:59:33

Page 227

1 WILLIAM C. KENNEDY  
2 weren't concentrating on Barbara Robinson's first two 15:59:38  
3 paragraphs when you looked at this? 15:59:41  
4 A. Right. 15:59:43  
5 Q. You were simply looking at the language 15:59:43  
6 itself? 15:59:44  
7 A. Yes. 15:59:45  
8 Q. Were you able to make the determination you 15:59:46  
9 just made for me without looking at her first two 15:59:48  
10 paragraphs? 15:59:53  
11 MR. RYAN: Objection. 15:59:56  
12 THE WITNESS: I hadn't thought of it that 15:59:56  
13 way. I was really responding specifically to the 15:59:58  
14 questions that you've posed and trying to clarify my 16:00:02  
15 answer. 16:00:07  
16 BY MR. TORBORG: 16:00:12  
17 Q. My question is simply this. 16:00:12  
18 A. Reading the language, yeah. 16:00:15  
19 Q. Do you need this letter to determine 16:00:15  
20 whether or not any gains on the sale that are not 16:00:17  
21 attributable to interest income or dividend income 16:00:22  
22 are permanently restricted and part of principal? 16:00:25  
23 MR. RYAN: Objection. 16:00:29  
24 THE WITNESS: That's an interesting 16:00:32  
25 question. 16:00:33

Page 228

1 WILLIAM C. KENNEDY  
2 This goes back to the question of there not 16:00:49  
3 being a provision in the document for the use of 16:00:51  
4 principal. 16:00:53  
5 MR. TORBORG: Well -- 16:00:55  
6 THE WITNESS: And whether this -- we just 16:00:56  
7 got done talking about premiums being income as 16:00:57  
8 opposed to being principal. So not having the 16:01:00  
9 language in front of me, is it fair for me to 16:01:08  
10 conclude that realized or unrealized gains could be 16:01:10  
11 used is the question? 16:01:13  
12 BY MR. TORBORG: 16:01:15  
13 Q. If the -- let me ask it a different way: 16:01:17  
14 If there were language in the trust agreement that 16:01:19  
15 said principal is permanently restricted or corpus is 16:01:22  
16 permanently restricted -- 16:01:25  
17 A. Uh-huh. 16:01:31  
18 Q. -- would you need the Barbara Robinson 16:01:31  
19 letter to determine the availability of capital 16:01:32  
20 appreciation on the trust? 16:01:37  
21 MR. RYAN: Objection. 16:01:37  
22 THE WITNESS: I think I would, but I 16:01:44  
23 respect that someone that's much more knowledgeable 16:01:45  
24 with regard to the way trusts function and work and 16:01:48  
25 perhaps who are more familiar with the specific -- 16:01:54

Page 229

1 WILLIAM C. KENNEDY  
2 even these specific instruments might not have needed 16:01:58  
3 it. I think that my approach to this would be to go 16:02:03  
4 back to the document, even if I had a gut feeling one 16:02:07  
5 way or the other. 16:02:11  
6 BY MR. TORBORG: 16:02:12  
7 Q. But you would rely on that underlying 16:02:12  
8 document? 16:02:14  
9 MR. RYAN: Objection. 16:02:15  
10 THE WITNESS: I would rely on the 16:02:15  
11 underlying document. 16:02:16  
12 MR. TORBORG: Okay. I think we can put 16:02:23  
13 this aside. 16:02:23  
14 THE WITNESS: Good. 16:02:25  
15 BY MR. TORBORG: 16:02:25  
16 Q. You talked earlier about a severance 16:02:28  
17 agreement that you prepared for Carol Calvert. 16:02:34  
18 A. Yes. 16:02:36  
19 Q. What do you remember about the 16:02:38  
20 circumstances leading to that severance agreement? 16:02:40  
21 A. I was told that she was being let go by 16:02:51  
22 David McConnell. My conversations were all with 16:02:56  
23 David, not with Mr. Abdelhak. David came to me -- 16:03:00  
24 and again, this is at a time Nancy's not there -- we 16:03:07  
25 need a severance agreement for Carol, basically what 16:03:11

58 (Pages 226 to 229)